

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14192 of St. Patrick's Episcopal Church as amended, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the use provisions (Sub-section 3103.3), from the prohibition against open parking spaces being less than ten feet from the wall of a multiple dwelling (Paragraph 7205.11), from the prohibition against allowing open parking spaces within a side yard less than three feet from a side lot line (Paragraph 7205.122) and from the prohibition against allowing a driveway to be less than fourteen feet in width (Sub-section 7206.7) to permit the conversion of an existing structure (church) to an apartment house of twenty-one units in an R-3 District at premises 1655 Foxhall Road, N.W., (Square 1350 , Lot 156.).

HEARING DATE: October 17, 1984

DECISION DATES: November 7, 1984 and July 3, 1985

FINDINGS OF FACT:

1. The applicant amended the application at the public hearing of October 17, 1984, and withdrew two of the area variances that had originally been requested and advertised for the hearing. Due to design modifications and adjustments, the variances from the closed court requirements (Sub-section 3306.1) and the requirement that all required parking spaces measure nine feet by nineteen feet (Sub-section 7204.1) were no longer needed. The number of dwelling units was also reduced from twenty-four to twenty-one.

2. The subject site is located on the southeast corner of the intersection of Reservoir Road and Foxhall Road, N.W. The site is in an R-3 District and is known as premises 1655 Foxhall Road, N.W.

3. The subject site has the shape of a five-sided figure bounded by streets on the north, west and south, and bounded by a public alley on the northeast and southeast. The public alley separates the subject parcel of land from the residential development to the east. The dimensions of the parcel are 132.60 feet on the north, 95.0 feet on the south, 112.97 feet on the west, 103.62 feet on the northeast, and 95.49 feet on the southeast. The lot area is 22,644.98 square feet.

4. The site is improved with a three-story brick church structure that occupies 54.54 percent of the lot. It is presently used by St. Patrick's Episcopal Church as a church and private school. The church structure has had numerous additions during the past fifty-six years and now consists of seven different levels. The structure contains a total gross floor area of approximately 24,013 square feet.

5. There is access to and from the subject site through Reservoir Road on the north, Foxhall Road on the west and Greenwich Parkway on the south. There is also access to the site through the fifteen-foot wide public alley on the northeast and southeast. Forty-fourth Street is located a short distance east of the site.

6. North of the site across Reservoir Road is residentially developed property in the R-1-B District. East of the site, across the alley, are row dwellings in the R-3 District many of which are nonconforming as to lot size. Across Greenwich Parkway to the south, existing development is also row dwellings in the R-3 District. West of the site across Foxhall Road are single family detached dwellings in the R-1-B District. Hardy Elementary School and playground are located one block to the southwest. One-half block south of the site on Foxhall Road is a small area of C-1 zoning. Institutional uses including the West German Chancery and the site of the French Chancery and Georgetown University are also located nearby.

7. Reservoir Road is a two-way, four-lane minor arterial street with a ninety foot right-of-way and an average daily traffic volume of 15,700 vehicles. Residential permit parking is in effect on both sides of the street near the site.

8. Foxhall Road is a two-way, four lane arterial with a 120 foot right-of-way and an average daily traffic volume of 19,500 vehicles. Parking is prohibited in the west curb lane between 7:00 A.M. and 6:30 P.M. Parking is prohibited in the east curb lane at all times.

9. Greenwich Parkway has a sixty foot right-of-way with a divided north-south roadway. Residential permit parking is in effect on the south side of the street. Parking is prohibited in the north curb lane between 8:30 A.M. and 4:00 P.M.

10. The site is served by Metrobus routes D4 and D8, which provide service at approximately ten minute headways during rush hours and approximately thirty minute headways in the middle of the day.

11. The Church was constructed in 1928. Significant additions were added in 1953 and 1965. The school began operating in 1956 pursuant to BZA Order No. 4635. In 1965, the Board approved an application for the church to build an addition to the existing private school pursuant to BZA Order No. 8131. An extension of the hours of operation of the preschool was approved by the Board in 1978 in BZA Order No. 12664.

12. In BZA order No. 14009, the Board of Zoning Adjustment recently granted the Church permission to construct a new church building at a nearby location, 4700 Whitehaven Parkway, N.W. in conjunction with an addition to its private elementary school. The move was necessitated after an in-depth, long-range planning study concluded that the existing Church building was not barrier free, was in need of costly renovations and would require expensive continued maintenance. A study was made by the architectural firm of Hartman-Cox Architects that concluded that the subject structure would not satisfy the needs of the congregation and that there was no space available for further on-site additions. Therefore, the applicant intends to consolidate the Church with its day school at the single site on Whitehaven Parkway. The new facility will begin operation in March, 1985.

13. The Church conducts a great variety of outreach programs including a senior citizen center, a nutrition center and Alcoholics Anonymous. These activities are conducted in the subject structure at present. The new Church building approved in BZA Order No. 14009 will allow the applicant to increase its incidental outreach activities and provide modern facilities that are accessible to the handicapped.

14. The applicant and contract purchaser plan to convert the existing St. Patrick's Episcopal Church into a twenty-one unit residential condominium. The church's architecture is of the English Tudor style, as is the Foxhall Village neighborhood to the east. The proposed unit mix is one efficiency with den, five one-bedroom units, six one-bedroom with den units and nine two-bedroom units. The units will average approximately 988 square feet of net floor area. Several of the units will be on two levels, and some will incorporate loft spaces. All will have access to light and air by way of centrally located open courts and/or windows facing the perimeter of the site. Twenty-one on-site parking spaces are proposed.

15. Daniel W. O'Donoghue, the contract purchaser, first contacted the Church in October, 1983, to inquire about the subject site's availability. As a developer of numerous residential projects in this neighborhood and as a lifelong resident of the neighborhood, he believed that the

Church structure could be preserved if it was converted to some marketable use.

16. The contract purchaser cited several reasons for his desire to preserve the structure. The site and facilities were considered significantly important buildings in the neighborhood with the first church dating back to the early 1930's. The exterior architecture of the facility, especially the old section, Warren Hall, was uniquely in keeping with the English Tudor style of Foxhall Village established in the late 1920's by the builder, Harry K. Boss of Boss and Phelps. The interior of the building has unusual quality features such as vaulted ceilings, attractive exposed brickwork and leaded glass windows. Developing the land, if the building was demolished, would result in multiple curb cuts at a highly travelled intersection.

17. The proposed apartment use is not a permitted use in the R-3 District. An apartment house is first permitted as a matter of right by conversion of a building existing in May, 1958, in the R-4 District. The applicant is therefore required to seek a variance from the R-3 use provisions of Sub-section 3103.3. Area variances related to required and nonrequired parking spaces are also requested, pursuant to Paragraph 7205.11, Sub-paragraph 7205.122 and Sub-section 7206.7.

18. The Board of Zoning Adjustment has the power to grant a use variance pursuant to Paragraph 8207.11 of the Zoning Regulations. The granting of a use variance requires that there be an undue hardship upon the owner arising from a unique or exceptional condition of the property which precludes the property from being used for the purpose for which it is zoned. The granting of the use variance must not cause a substantial detriment to the public good nor impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

19. The extraordinary or exceptional situation or condition affecting the subject site stems from the existing building on the lot and its structural and physical configuration and condition. These conditions are unique to the site and are not otherwise found in the neighborhood. The existing structure was constructed in 1928 and is exceptionally large, containing approximately 24,013 square feet of gross floor area. It is an irregularly shaped building that has experienced a number of additions. These additions have resulted in the structure having seven different levels thereby making it functionally inefficient to operate as a single use. The building also has a fifteen foot building restriction line adjacent to Foxhall Road and Greenwich Parkway. The existing structure is in need of numerous improvements including a new heating and cooling system and bathroom and toilet facilities. The building is

not barrier free and would be virtually impossible to remodel in order to conform to Building Code requirements. There are no bathrooms on the sanctuary level. The Church has received an estimate of \$300,000 to replace the heating and cooling system. The spaces within the building are inconsistent and irregular with a main nave containing 6,000 square feet and a capacity for approximately 600 people while there are only small scattered areas for classrooms, playgrounds and offices.

20. Because of the condition of the structure, the church and school have been forced to move to a new location in order to fulfill the congregation's needs and to continue its community outreach programs. The architectural study prepared by Hartman-Cox concluded that no space was available on the subject site for further on-site additions.

21. A real estate broker testified that the existing conditions and the provision of only eight off-street parking spaces have hindered efforts to sell the site for a permitted purpose. Also, the site's existing use as a church makes it unique in that the market for such a use is very limited. Most traditional churches in the city generally have established locations and structures while newer or smaller religious groups do not require a facility as large as the subject site.

22. Exceptional and undue hardship will ensue in this case if the use variance is not granted. The applicant has made a diligent and bona fide effort for two years to sell the property for a permitted use but has been unsuccessful. The task began with a real estate appraisal of the property by the applicant's real estate firm, Barnes, Morris & Pardoe, to determine its fair market value. As a result of this analysis, it was determined that it would take approximately \$1.8 million to replace the existing structure. The initial asking price was \$2 million.

23. Sixty-seven contacts were made with religious organizations but only one, the SUBUD, made an offer on the property only to cancel it one month later due to insufficient funds. The SUBUD's offer was for only \$1.3 million.

24. The real estate broker testified that the sales approach included marketing the site for nonchurch uses. This too proved to be unsuccessful. Fifty-four schools and nonprofit organizations also expressed an interest in the subject site but none came forward with an offer to purchase. An additional forty-four inquiries were made with other real estate brokers and developers without any purchase offers. A reduction in the asking price to well below both the fair market and assessed values failed to generate any offers. The Board finds that the reasons for the lack

of interest are directly related to the nature of the structure.

25. The proposed use is reasonable in light of the fact that no permitted use can be found that will provide a reasonable return. The Board finds that the applicant is not seeking to increase its profit from the sale of the land over the assessed fair market value. Rather, the contract price of \$1,075,000 is \$725,000 below the fair market value and \$140,500 below the City's latest assessed value of the site of \$1,215,500.

26. The present application and the decision of the D.C. Court of Appeals in the Clerics of St. Viator involve similar situations and conditions. In Clerics, a use variance was requested to convert a religious seminary to a convalescent home after the applicant's efforts to sell the existing structure to other religious or educational institutions failed. The reason for the failure of the seminary use was a decline in enrollment. The Court found that the structure was only twelve years old and was in good condition but no permitted user came forth after a good faith and vigorous sales effort was made by the applicant. The Court reviewed the valuation techniques used by the applicant, namely, the appraised value, the replacement value and the assessed value, and determined that the applicant would lose several hundred thousand dollars.

27. Comparing the Clerics decision to this application, the subject structure is fifty-six years old and in poor condition. A good faith and vigorous sales effort was made for two years, as demonstrated by the testimony and evidence of record, but a permitted user could not be found. The same three valuation methods used in the Clerics case were used by the applicant. The Board finds that the loss to the applicant could be approximately \$700,000 which is of a greater magnitude than the loss in Clerics.

28. In order to provide sufficient off-street parking, three area variances are requested. The first is a variance from the prohibition from open parking spaces being less than ten feet from the wall of a multiple dwelling (Paragraph 7205.22). The second is a variance from the prohibition against allowing open parking spaces in a side yard within three feet of a side lot line (Paragraph 7205.122). The third is a variance from the prohibition from allowing a driveway to be less than fourteen feet in width (Subsection 7206.7).

29. The Board of Zoning Adjustment has the power to grant area variances under Paragraph 8207.11 of the D.C. Zoning Regulations which provides that where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of

the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of the Zoning Regulation would result in peculiar and exceptional practical difficulties to the owner of such property, the Board may authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map.

30. The applicant's practical difficulties in this case stem from the fact that there is an existing structure that is to be retained. The structure occupies a majority of the site which precludes strict compliance with parking requirements. The size, layout, condition and present use of the site make it unique to the neighborhood since these conditions are not prevalent among other structures.

31. None of the requested area variances circumvent the Zoning Regulations. Although the driveway entrance is only ten feet in width, it widens to the required fourteen feet once inside of the garage. The open parking spaces are not flush against the wall of the structure but are an average of six feet away. The requested variances will enable the contract purchaser to provide parking to meet the expected demand. Future occupants will not be forced to compete for on-street parking spaces with other residents of the neighborhood.

32. The proposed conversion of the subject site from a church to twenty-one residential units will not be detrimental to the neighborhood because the use is compatible with, and will not change the residential character of, the neighborhood. There are similar apartment units located four blocks from the site along MacArthur Boulevard. The design of the project is such that the existing structure is retained in a sensitive and harmonious manner. The architecture conforms to adjacent row structures and commercial buildings. The Reservoir Road facade is being improved to be more compatible with the existing structures to the east. The structure itself is not being enlarged. Revisions to the plans have been made in response to concerns voiced by local citizen groups and the Office of Planning. The Board finds that a residential use will generate less activity and therefore less impact than an institutional use.

33. A housing expert testified that adjacent property values will not decline as a result of the proposed conversion of the building. Rather, the proposed high-quality improvements of approximately \$1 million will bring stability to land values in the immediate area. The proposal will compliment the character of the neighborhood. If this

application is denied, the building will remain vacant without contributing to either the community or the city. Further, the housing expert testified that the alternative of demolishing the structure and constructing eleven matter of right townhouses would not be marketable at this busy intersection. The Board concurs with the expert's findings.

34. A traffic expert testified that the proposed use will result in substantial benefits to the neighborhood. The number of trips generated by the site will decline by approximately sixty-seven percent. Adjacent alleys and streets will be less congested than they are presently when school children are dropped off and picked up. The provision of twenty-one off-street parking spaces will eliminate overflow parking into the neighborhood and the level of service of adjacent roads will not increase due to the conversion. The Board concurs with the findings of the traffic expert.

35. The Office of Planning (OP), by report dated October 10, 1984, recommended that the application be approved with amendments and conditions. The Office of Planning was of the opinion that there are unique conditions and situations directly related to the property's size, shape and improvement which lend support for the variances requested. The OP believed that with some modification of the plans that the project can function with far less impact on surrounding properties than experienced during the active use of the site as a church. The OP was equally concerned that the number of units proposed to occupy the site be reduced for reasons of density and compatibility with the neighborhood. In this regard, the OP recommended that this application be approved subject to the following conditions:

- A. The maximum number of apartment units shall be seventeen.
- B. The underground garage (two parking spaces) and driveway off of Foxhall Road shall be eliminated.
- C. In place of the proposed garage a function/recreation area shall be provided as an amenity for the residents.
- D. Parking spaces numbered three (off Greenwich Parkway) and five (off of the alley) shall be removed and replaced with treed landscaped islands.

The Board concurs with the major reasoning and recommendations of the Office of Planning, except that the Board is convinced by the applicant's case that it should grant the application for twenty-one units. The other OP



recommendations have been provided for in the applicant's revised site plan.

36. The Department of Public Works (DPW), by report dated October 1, 1984, evaluated the impact of the proposal as follows:

- A. The proposed development would generate between ten and fifteen automobile trips during the peak hour. This number of automobile trips is less than the number generated by the existing use, due to the higher volume of traffic generated by the church pre-school during the morning peak hour. Currently, eighty-six children and fifteen staff people attend the pre-school. The church provides fewer parking spaces (approximately ten) than the proposed use, and therefore must use the street system for its parking needs. Therefore, the proposed apartment house would lessen the impact of traffic on surrounding street system.
- B. The location, size and design of the proposed on-site parking spaces have been reviewed by the DPW and found to be acceptable with some modifications. The fifteen foot-wide public alley should be changed to a one-way south-bound direction to prevent traffic hazards that would be caused by two-way traffic.
- C. Traffic movement to and from the parking garage off Foxhall Road should be restricted to a right turn in and right turn out movement to prevent potential hazards due to the heavy traffic volumes on Foxhall Road.
- D. The ratio of compact car parking spaces proposed (forty-two percent) is in line with the proposed zoning amendments, in which DPW recommended a forty percent compact parking space ratio. Therefore the DPW did not object to the requested Variance.
- E. The developer must coordinate all construction and design elements within public space with the DPW and assume their cost.

The Board concurs with the findings of Department of Public Works, and notes that control of traffic direction and turning movements are within the authority of the Department of Public Works.

37. Advisory Neighborhood Commission 3B, by report dated October 10, 1984, recommended that the application be denied. The ANC based its recommendation on the widespread

opposition among neighbors of the site. The ANC resolution opposing the application was based on the following issues and concerns: density of the project described in the application over matter-of-right density; erosion of the zoning standards which protect the surrounding neighborhood; the misuse of the variance concept in this application; and reluctance to "bail out" the owner and the developer in their agreement to a price for the site which discourages matter-of-right use.

38. Advisory Neighborhood Commission 3B argued its four concerns as follows:

- (1) Density - The site is zoned R-3. As a matter-of-right, eleven row houses could be constructed there. Instead, the contract purchaser is proposing to create an apartment house containing twenty-one units. This doubling of allowed density would bring with it twice as many people coming and going and living there. Twice as many cars would be involved over matter-of-right development. This site is at the corner of Foxhall Road and Reservoir Road where perilous traffic condition have been the subject of a number of citizen concerns. An increase in traffic such as that envisioned in this apartment house proposal is an additional threat to vehicular and pedestrian safety in this neighborhood. Parking in this neighborhood is extremely limited.
- (2) Zoning erosion - The site's R-3 zoning would permit eleven row houses or such uses as a church and/or school. Anyone who has bought a home in the immediate neighborhood has had a right to expect that these standards would be adhered to. The ANC, the neighbors of the site and the Foxhall Community Citizens Association want the protection afforded by strict application of R-3 zoning standards to continue. They do not want an apartment house in this zone. It would be an unwelcome intrusion. It would be the first apartment house in the neighborhood, possibly to be followed by others. The existence of many undeveloped sites within a short distance (one-half mile) of the site was a concern to the ANC when it considered this case.
- (3) Misuse of variance concept - Referring to Section 8207.11 of the Zoning Regulations, ANC 3B wanted to discourage applications such as this which seek to introduce inappropriate uses on the basis of some extended notion of "hardship" which in its opinion was never contemplated by the authors of

the Zoning Regulations. This section should refer to hardship based on the physical condition of the property and not on the financial condition of the owner. Finally, Section 8207.11 states that an application such as this one can be approved only when there would be no "substantial detriment to the public good." In the ANC opinion there was sufficient substantial detriment to the public good described in items (1) and (2) to discourage the BZA from approving this application.

- (4) Excessively high price of the property - The owner has set a price on the property that discourages matter-of-right use of the site. The ANC reported that it is common practice for developers to pay these excessive prices and then to maintain that because of the high cost of land they couldn't possibly build matter-of-right. The ANC further reported that all too often the Zoning Commission or the BZA is asked to approve non-matter-of-right zoning applications in response to such economic "woes." If they do, the spiral of ever-rising land costs with more resulting non-matter-of-right proposals continues. The ANC wanted to discourage such practices. It did not want to "bail out" this owner or this developer in their unwise setting and agreeing to an artificially high price for the site. They did not want to approve of the enrichment of the owner and the developer at the expense of the neighbors who do not want to lose the protection afforded by their R-3 zoning standards and who do not want to live with the consequences of a doubling of density on this sensitive site.

The Board is required by statute to give "great weight" to the issues and concerns of the ANC, when such issues and concerns are reduced to writing in the form of a report. The Board does not concur with the ANC, for reasons explained below.

39. D.C. Councilmember Polly Shackleton, by letter dated October 16, 1984, expressed her support for ANC 3B in its opposition to the application. Mrs. Shackleton's greatest concern was the precedent which would be set by allowing an apartment house in this neighborhood which would double the allowed density, as opposed to building eleven townhouses as a matter-of-right on the R-3 zoned site. The citizens of the area had expressed concern that if this variance were granted it would have an impact on future applications for other undeveloped sites, some as close as one-half mile away. Further, Councilmember Shackleton was aware of the many problems which already exist because of

dangerous conditions caused by ever-increasing traffic congestion, severely limited parking, as well as the continuing threat to pedestrian safety. The Councilmember was hopeful that the BZA would uphold the protection afforded to the citizens of this area by denying this application for a variance. The Board notes the concerns expressed by Councilmember Shackleton. However the Board does not concur with these concerns for reasons expressed below.

40. Six neighbors submitted letters to the record supporting the application. The support was based on the opinion that the proposed use would enhance the residential character of the area and provide an imaginative and appealing use for the existing structure whose lack of a viable use is now a problem. In the supporters' opinion, the plans for the residential conversion were exceptionally attractive and well thought-out. The supporters were further of the opinion that the residential use of the site would reduce the parking and traffic problems that now result from community activities at the site. On-site parking proposed in the application would further reduce parking impact on the area. The supporters noted that the proposed conversion would preserve the existing facade of the structure. The supporters further noted that the alternative uses include an abandoned building, townhouses of doubtful architecture, or another religious group that would generate the same traffic and parking problems that exist now.

41. Seven neighbors testified in support of the application at the public hearing. The support was based on the opinion that the church is a landmark in the area. The supporters observed that the opposition was based on the misguided opinion that the Board cannot enforce zoning laws and decisions. Supporters were of the opinion that the conversion would preserve and up-grade the site by providing new covered dumpsters and on-site parking. The on-site parking was seen by the supporters as improving local parking problems.

42. The supporters were also of the opinion that the probable alternative to the proposed conversion would be a vacant eyesore that would have a negative impact on the neighborhood. The supporters reported that the proposed developer had done an excellent job of tailoring the design of the conversion to please the community. The supporters expressed apprehension that if the church were to wait for a religious or educational group to purchase the structure as a matter-of-right, their activities could have a negative impact on the community and the neighbors would have no right to oppose any religious group that might have a negative impact. The supporters contended that there is no way to predict the type of organization that might purchase the building.

43. The supporters were further of the opinion that the Church had made a very reasonable effort to sell the building but had found no religious or educational group to purchase the site. They questioned the validity of the opponent's apprehension that a precedent would be set in this case. The Board confirmed that each case is decided on its own merits and not by precedent. The supporters urged the Board to grant the application so that this neighborhood landmark could be preserved and put to a residential use. The Board concurs with the reasoning and the recommendations of the neighbors in support.

44. In addition to ANC 3B, the Foxhall Community Citizens Association (FCCA) and seven persons testified in opposition to the application. The FCCA also submitted into the record copies of petitions in which 397 persons from the neighborhood, ninety-seven percent of those polled, including ninety-five percent who live within 200 feet, expressed their opposition to the application.

45. The FCCA opposed the application through testimony at the public hearing, by letter dated October 17, 1984, and through the submission of proposed findings of fact and conclusions of law.

46. The FCCA noted that the applicant has asserted that it made diligent efforts to sell the site for a permitted use for a period of two years. The FCCA argued that the applicant's inability to generate interest in the property was a direct result of the unreasonably high asking price for the property. The FCCA was of the opinion that the marketability of the site is directly tied to price. The FCCA questioned whether or not the subject site was reoffered for sale at the current contract price.

47. The FCCA noted that it was the applicant itself which over the years made additions to the subject structure which has resulted in its existing configuration. Thus, as to the applicant's claimed hardship resulting from the church's structure, the FCCA was of the opinion that if there has been hardship, it has been self-imposed.

48. The FCCA was of the opinion that the character of the neighborhood, is single-family, low-density residential. The FCCA was further of the opinion that property owners in the neighborhood of St. Patrick's have a right to expect the continuation of zoning protections in the absence of a clear showing that a particular property owner has been denied all beneficial use of property.

49. The testimony of FCCA and neighborhood residents expressed the following adverse neighborhood impacts:

A. To immediate neighbors: additional daily traffic; more noise and pollution from cars starting up, entering and leaving; intrusion of parking spaces immediately adjacent to the alley and sidewalk on Greenwich Parkway with foreseeable hazardous traffic and pedestrian impacts; more cars parking on street with probable car to unit ratio of more than one to one taking into account two car households and guest parking.

B. To community: intrusion of higher density use with diminution of neighborhood property values; potential for upsetting delicate balance between owners and renters; visual marring of the site by proposed driveway and additional parking spaces on the alley and Greenwich Parkway; creation of eyesore by destruction of attractive brick wall along Greenwich Parkway and replacement with a parking lot.

50. One concern raised by several participants in the public hearing was the question of whether the grant of a zoning variance in this case would have any precedential effect upon future zoning actions in the neighborhood.

51. The FCCA noted that the area variance requests for this application are contingent upon granting of a use variance. The FCCA's primary concerns were the limited number of parking spaces, location of the proposed parking spaces, and the driveway across the front lawn of Foxhall Road. Since FCCA concluded that the applicant had not established that it is entitled to a use variance, the FCCA further concluded that there was no need to discuss the criteria for the requested area variances.

52. The FCCA in its submission of proposed findings of fact requested that if the Board did approve the application, it limit occupancy to two persons per bedroom, place air conditioning equipment in the steeple and delete the curb cut and driveway on Foxhall Road.

53. The seven neighbors who testified at the public hearing in opposition to the application expressed concerns that were identical to those expressed by the FCCA and ANC 3B.

54. Seven neighbors submitted letters of opposition to the record. The opposition was based on the same concerns expressed by FCCA, ANC 3B, and the neighbors who testified.

55. The petition of opposition containing 397 signatures which was submitted to the record based its opposition on the opinion that denial of the application was necessary in order to maintain the integrity of the single-family residential neighborhoods in which the petitioners live.

56. The Board finds that the concerns of the opposition are not justified. The ANC 3B, FCCA and other opponents all expressed concern about similar issues but these concerns were not supported by substantive evidence. The arguments of the applicant were founded on more substantive evidence and were more persuasive.

57. The Board finds that the applicant has made a good-faith and vigorous effort to sell the property for a permitted use. The Board finds that the price at which the property was offered for sale was reasonable. The applicant listed the property for sale for two years, and was unable to find a buyer other than the contract purchaser.

58. The Board finds that the proposed use will have less negative impact on the neighborhood than the possible alternative uses. The applicant's traffic expert and the report of the D.C. Department of Public Works conclusively demonstrated that there will be a reduction in traffic impact for use of the site as apartments than if it remained in some kind of institutional use. The provision of one parking space per dwelling unit equals the most restrictive standard in the Regulations for parking for apartments for any zone district. The Board will limit occupancy of each dwelling unit to no more than two adult persons in order to prevent overcrowding of the site and limit further impacts because of traffic.

59. The Board notes that a decision in this case will not establish a precedent either for or against apartment conversions in the subject neighborhood or in the R-3 District generally. Each application brought before the Board is decided on its own merits. The Board has already found that the subject property is unique in this neighborhood. Any decision in this case will have no precedential value to other properties in the vicinity.

60. The Foxhall Community Citizens Association, by letter dated October 24, 1984, requested that the Board extend the deadline for the submission of proposed Findings of Fact and Conclusions of Law until a transcript of the public hearing of October 17, 1984, was available to use in preparing the findings. The granting of this request would have entailed the postponing of the Board's decision date for the application.

61. The Board notes that it has been customary to request that proposed findings be submitted within two weeks of the hearing based on the testimony given during the hearing. Such a determination was made at the hearing of that case without objection from any party. The parties submitting proposed findings of fact and conclusions of law were present at the public hearing and heard the testimony. Further, scheduling the submission of proposed findings of

fact and conclusions of law for after the availability of a transcript would result in unreasonable delays in the Board's decisions. Accordingly, the Board denied the request and rendered its decision on November 7, 1984, as originally scheduled.

62. The Board's Order, dated February 20, 1985, was appealed to the District of Columbia Court of Appeals by the Foxhall Community Citizens Association. One of the grounds cited was that a member of the Board who voted to grant the application did not hear the entire case at the public hearing nor did such Board member read the transcript of the public hearing.

63. The BZA filed a Motion with the District of Columbia Court of Appeals requesting that the case be remanded for a proper decision. There was no opposition to the motion.

64. By Order dated June 3, 1985, the D.C. Court of Appeals remanded the case to the BZA for proper decision.

65. By memorandum dated June 7, 1985, the Executive Director of the BZA advised the parties that the Board of Zoning Adjustment was in receipt of the Order dated June 3, 1985, of the D.C. Court of Appeals remanding Case No. 14192 to the Board for a proper decision. In accordance with Section 1-1509(d) of the D.C. Code (1983 Ed.), the Board advised the parties that it proposed to adopt the attached proposed order as its final decision in this case. The memorandum advised that any party who may be adversely affected by this proposed order could file exceptions to the proposed order. Those exceptions could be accompanied by a brief in support of the exceptions, setting out the arguments in support of the exceptions. Those exceptions and accompanying briefs were to be filed in the Zoning Secretariat no later than fourteen days from the date of the memorandum, that is, to be received by June 21, 1985. The exceptions and briefs were required to be served simultaneously on the other parties. Parties could file replies to the exceptions and briefs to be received no later than June 28, 1985, with simultaneous service on the other parties.

66. At the public meeting of the July 3, 1985, having reviewed the proposed Order, the exceptions, briefs and responses filed thereto by the parties and Board member William F. McIntosh having read the entire record, the Board adopted the proposed Order subject to editorial revisions.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a



use variance and three associated area variances to convert a church structure to twenty-one condominium apartment units in an R-3 District. The granting of a use variance requires a showing through substantial evidence of a hardship upon the owner arising out of some unique or exceptional condition in the property so that the property cannot reasonably be used for the purpose for which it is zoned. The granting of the area variances requires the showing of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The Board must further find that the relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps.

The Board concludes that the applicant has met the burden of proof for a use variance. The existing structure on the site is configured in such a way that it cannot be used or sold for the purpose for which it is zoned. The church structure has seven different levels created by additions made over a fifty-six year period. The structure is not barrier-free, which creates an adverse impact on church activities such as those involving senior citizens and the handicapped. The structure is functionally inefficient to operate as a single use due to its multiple separate spaces. The fact that the Church built the building over fifty years ago, made several additions over time and has used the building to the present time, does not create a "self-imposed" hardship.

The St. Patrick's Episcopal Church has made a good faith and vigorous effort to sell the structure to another church, religious group, school or non-profit organization at a reasonable price for a period of two years. There have been no qualified buyers who could put the site to a permitted use. The applicant is thus denied all reasonable use of its property unless a variance from the strict application of the zoning regulations is granted. The Board is of the opinion that the applicant has done all that could reasonably be expected of it. It is not inconceivable that at some point in time, at some price, another buyer could be found. The Board does not believe that the statute or the Regulations requires the applicant to wait indefinitely or search forever for a buyer. The applicant is entitled to a use variance based on the conditions described in this order.

The proposed apartment conversion will preserve the original Tudor facade of the structure and will be harmonious with the Tudor design of the adjacent rowhouse development. The proposed apartment design will take advantage of the multi-level nature of the structure to create individual

dwelling units. This design provides a reasonable use for the existing structure with its seven levels.

The Board concludes that the proposed residential use will generate less activity and will therefore create less traffic and other impacts on the surrounding R-3 residential uses than an institutional use would create. A use variance for the proposed apartment conversion of the subject structure can be granted without substantially impairing the intent, purpose and integrity of the zone plan. The R-3 district is intended to be primarily a residential district.

The Board concludes that the applicant has met the burden of proof for the three area variances. The existing structure occupies 54.54 percent of the site and does not leave sufficient open spaces on the site to comply with the parking requirements. This lack of open spaces on-site creates practical difficulties for the owner in complying with the requirements of Paragraph 7205.11, 7205.122 and Sub-section 7206.7.

The Board further concludes that the granting of the three area variances will provide the benefits of twenty-one on-site parking spaces in a residential district and will assist in alleviating neighborhood parking problem. The relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled by statute. The Board does not concur with the recommendations of the ANC, for the reasons discussed in the Findings and Conclusions.


Accordingly, it is hereby ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Occupancy of the dwelling units shall be limited to two adult persons per bedroom.
2. Air conditioning equipment shall be located in the existing church steeple.
3. The layout of the development and parking shall be in accordance with the revised site plan marked as Exhibit No. 59 of the record.

VOTE: 3-1 (William F. McIntosh, Charles R. Norris and Carrie L. Thornhill to adopt the proposed ORDER; Maybelle T. Bennett opposed; Douglas J. Patton not present, not voting.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER:

- 9 AUG 1985

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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